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CHARLES ELMORE CRO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 717

ROSE K. JOYCE,

Petitioner,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO,
a Body Politic and Corporate

REPLY BRIEF OF PETITIONER.
(In Application for Certiorari.)

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There are but two questions in this case, the one on which the Appellate Court of Illinois rested its decision, the question of Freedom of Speech, and the other the general question of due process of law inherent in the record.

The case was narrowed down by the opinion of the Appellate Court to the one question of Freedom of Speech.

I.

Only Freedom of Speech is involved in the decision of the Appellate Court.

The Appellate Court would not say that what was said by petitioner as a teacher in her history classes at the hour of the declaration of war, as recited by highly nervous and excited students, contradicting each other with their youthful impressions and conclusions, was reliable enough to sustain the action of the Board of Education; or, if believed, could be judged out of its context when uttered in a class room by a teacher of history.

The Appellate Court in its opinion shows that petitioner claimed her right to say what was in the Nyvall letter under the constitutional guaranty. The Appellate Court says that petitioner takes the position that she is entitled to freedom of speech and that she had a right to write the letter (Abst. 158) and say that petitioner should have foreseen "that her letter if publicized, as it was" would have a demoralizing tendency, thus charging petitioner with its publication which was done by the Board itself. The court concludes that in its opinion "a teacher writing such a letter ought not to be permitted to continue teaching in public schools," (Abst. 138) and then say

> "in view of our conclusion that the letter to Nyvall was indefensible and constituted cause for dismissal we consider it unnecessary to discuss the testimony adduced upon the hearing as to other charges or to decide whether the findings in respect thereto are sustained by the record." (Abst. 159).

Only a Federal question was decided.

Thus it is seen that the Appellate Court grounded its decision squarely upon a Federal question when it held that the right to Freedom of Speech did not protect petitioner from discharge on the ground of having written the letter, and on that ground alone.

The Nyvall letter does not violate the right of Freedom of Speech.

The Nyvall letter is not vicious in nature. Petitioner only congratulated the young man because of his attitude toward war,—war in the abstract. What Nyvall had said,—and of which we all are now acutely conscious,—was that war is mass murder.

It is to be borne in mind that petitioner did not publicize the letter in question; that it was made public by the Superintendent of Schools, not petitioner; that he publicized it, created the public hysteria and the Board of Education then discharged petitioner for the effects created by its own Superintendent.

What was said in the letter was a private communication under seal. The Superintendent of Schools, or the School Board, publicized the letter and then laid charges against petitioner as if she had said the things in public, and as if petitioner had said them with all of the interpretations the respondent places upon the letter.

Petitioner did not "grant an interview" to the press as is said by opposing counsel. Respondent, or its Superintendent of Schools, gave out the letter to the press and a reporter called on petitioner at the school and asked ques-

tions of her. She testified she was surprised (Abst. 126) by the visit of the news reporter. She was not seeking publicity but the respondent was.

This is an example of how unfair, prejudiced, and hysterical this whole proceeding was. Nothing was proven against petitioner except that she wrote the letter and mailed it under seal.

II.

What happened in class is not here involved.

What the school children related, being wholly statements taken out of the context of the history class lessons, was not considered by the Appellate Court of enough substance to place reliance upon; yet opposing counsel relate the matter in a one-sided way in great detail for its prejudicial effect. That subject is not open here for the Appellate Court did not rely upon it, and did not decide against petitioner on that charge.

Even the modification of the famous toast of Decatur which is known to every school child is considered of such importance as to condemn petitioner. She had advocated one taught to her by a distinguished educator, "My country, may she always be right. When she is right, stand by her. When she is wrong, help right her.", on the theory that Americans should not be encouraged to continue to uphold wrongs that existed in the nation's laws against racial and religious minorities (Abst. 95-96).

III.

Petitioner assumes its case.

We find the same statement echoed in the brief of opposing counsel (pp. 12-13), that is found in the Opinion of the Appellate Court (Abst. 158), to the effect that Nyvall had publicly announced that he would not register on the day fixed by the President, and that following such announcement petitioner wrote the letter in question. There is no such testimony in the record and the attempt to prejudice petitioner by such extraneous matter is wholly unfair.

In fact all there is in respondent's case is innuendo. There is only one fact with which to charge petitioner and that is that she wrote the Nyvall letter, a private letter; a letter publicized by respondent or its Superintendent of Schools, and then used as a basis for unjust charges against petitioner. All else is make-weight and build-up.

After calling petitioner to the stand and proving by her the innocent interpretations of the statements in her letter to Nyvall the respondent refuses to be bound by its own testimony and continues in its effort to destroy petitioner's career as a public teacher, by spray-gunning its innuendoes.

The prejudicial method of her trial, and the hatreds and hysteria of the era, show through the whole record and the brief of opposing counsel reflects it in emphasis.

The Board of Education changes viewpoint.

Suddenly all the great work of petitioner as an educator, loudly complimented and proclaimed by the Superintendent of Schools a few months before, is turned against petitioner. Petitioner had not changed in her method of work and her philosophy over night; she remained the same, but the psy-

chology of the members of the tribunal that tried her had changed. War had warped their attitudes and visions, and petitioner fell victim to their self-righteous war psychology.

The Board of Education itself or its officials have created this picture; they publicized the letter; they distorted its context, and they based charges upon such distortion.

IV.

The Nyvall letter does not reflect a lack of moral character or any disqualifying attitudes, or any clear and present danger from any constructions of petitioner's teaching.

The Nyvall letter in no sense reflects such a mentality as to disqualify petitioner from following her teaching career, but does reflect a high moral character when properly interpreted and understood. Petitioner had a right to say what was said in the letter regardless of all the unfavorable publicity created by respondent, and despite the groundless charges made against her by respondent and its officers.

The teacher of history, like the jurist, deals with the truth and things as they are, — they are not propagandizing. And they become targets of better criticism and denunciation in certain eras for duties well performed when the people, the masses, do not wish to hear the truth, and condemn with current mass thought.

Petitioners right to say what she did in the letter is protected by the constitutional guaranty contained in the First Amendment, — the great balance wheel of our American Way, — which she here invokes as a shield to her right to follow her chosen career.

In Thomas Collins 325 U. S. 516 it is said that any attempt to restrict freedom of speech must be justified by a

clear public interest threatened, not doubtfully or remotely but clear and present danger; and that only the gravest abuses endangering paramount interests give occasion for limiting the right; and that it is our tradition to allow the widest room for discussion and the narrowest range for restriction.

No danger is here apparent that the teaching by petitioner will in anyways be harmful to students or injurious to the morale or discipline of the school. In fact no complaint is made as to the teaching of petitioner.

Petitioner is penalized because of a supposed mental attitude.

V.

Petitioner is not charged with teaching disloyalty.

Petitioner did not teach disloyalty to the government and the cases decided in New York and Oregon, cited by opposing counsel, where teachers taught disloyalty to pupils are not in point here.

The Federal question decided.

The question here is can the Board of Education discharge petitioner because of the contents of a private letter not publicized by her and when examined has an innocent explanation; can such a letter be made the basis of a discharge for cause under the statute as against the plea of the right of Freedom of Speech under the Federal constitution.

And that is the only question upon which the Appellate Court passed.

Without substance there is no due process.

There is no practical substance to the charge against petioner or in the record of her discharge and without substance in a proceeding there is no due process of law.

Conclusion.

Wherefore it is suggested that respondent has shown nothing of consequence in opposition to the petition for certiorari and petitioner respectfully asks that the writ be awarded as prayed.

Respectfully Submitted

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